

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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IN RE TRICOR DIRECT PURCHASER  
ANTITRUST LITIGATION

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)  
) C.A. No. 05-340 (KAJ)  
) (Consolidated)  
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THIS DOCUMENT RELATES TO:  
)  
)  
ALL ACTIONS  
)  
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**DIRECT PURCHASER PLAINTIFFS' FURTHER NOTICE OF DEPOSITION  
OF DEFENDANTS FOURNIER INDUSTRIE ET SANTE  
AND LABORATORIES FOURNIER S.A.**

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiffs will take the deposition by oral examination of defendants Fournier Industrie et Sante and Laboratories Fournier S.A. on September 8, 2006 at 9:30 a.m., at Rosenthal, Monhait & Goddess, P.A., 919 Market Street, Suite 1401, Wilmington, DE 19801, or such other location agreed to by counsel. The deposition will be recorded by videotape as well as stenographically before a Notary Public or other officer authorized to administer oaths, and shall continue from day to day until completed, with such adjournments as to time and place as may be necessary.

NOTICE IS HEREBY GIVEN that, pursuant to Fed. R. Civ. P. 30(b)(6), Fournier Industrie et Sante and Laboratories Fournier S.A. are required to designate one or more officers, directors or managing agents, or other persons who consent to testify on their behalf and to give testimony on the topics set forth in Exhibit A hereto, and the person(s) so designated shall be

required to testify as to the matters known or reasonably available to the corporations with respect to each topic. You are invited to attend and to cross examine.

/s/ Jeffrey S. Goddess

Jeffrey S. Goddess (Del. Bar No. 630)  
Rosenthal, Monhait & Goddess, P.A.  
919 Market Street, Suite 1401  
P.O. Box 1070  
Wilmington, DE 19899-1070  
(302) 656-4433  
[jgoddess@rmgglaw.com](mailto:jgoddess@rmgglaw.com)  
Liaison Counsel for Direct Purchaser Class

Bruce E. Gerstein  
GARWIN, GERSTEIN & FISHER  
1501 Broadway, Suite 1416  
New York, NY 10036  
(212) 398-0055  
Lead Counsel for Direct Purchaser Class

/s/ Elizabeth M. McGeever

Elizabeth M. McGeever (Del. Bar No. 2057)  
Prickett Jones & Elliott, P.A.  
1310 King Street  
P. O. Box 1328  
Wilmington, DE 19899  
(302) 888-6521  
[emmcgeever@prickett.com](mailto:emmcgeever@prickett.com)  
Counsel for Walgreen Co., Eckerd  
Corporation, The Kroger Co., Maxi Drug,  
Inc. d/b/a Brooks Pharmacy, Albertson's,  
Inc., Safeway, Inc., Hy-Vee, Inc.,  
American Sales Company, Inc.  
CVS Pharmacy, Inc., Rite Aid Corporation  
and Rite Aid Hdqtrs. Corp.

Joseph T. Lukens  
HANGLEY ARONCHICK SEGAL  
& PUDLIN  
One Logan Square, 27th Fl.  
Philadelphia, PA 19103  
(215) 496-7032  
Attorneys for CVS Pharmacy, Inc., Rite  
Aid Corporation and Rite Aid Hdqtrs.  
Corp.

Scott E. Perwin  
Lauren C. Ravkind  
KENNY NACHWALTER, P.A.  
201 South Biscayne Boulevard  
1100 Miami Center  
Miami, FL 33131  
(305) 373-1000  
Attorneys for Plaintiffs Walgreen Co.,  
Eckerd Corporation, The Kroger Co.,  
Maxi Drug, Inc. d/b/a Brooks Pharmacy,  
Albertson's Inc., Safeway, Inc., Hy-Vee,  
Inc. and American Sales Company, Inc.

## **EXHIBIT A**

Fournier Industrie et Sante and Laboratories Fournier S.A. are requested to designate one or more officers, directors or managing agents, or other persons who consent to testify on their behalf who have knowledge of the matters set forth herein.

### **DEFINITIONS**

1. The term “Abbott” means Abbott Laboratories, or any of its subsidiaries, divisions, subdivisions, affiliates, predecessor and successor entities, partners, officers, directors, employees, agents, legal counsel, or any other person acting on its behalf.

2. The term “Fournier” means Fournier Industrie et Sante, Laboratories Fournier S.A., or any of their subsidiaries, divisions, subdivisions, affiliates, predecessor and successor entities, partners, officers, directors, employees, agents, legal counsel, or any other person acting on their behalf.

3. The term “Decision Makers” means the individuals involved on Fournier’s behalf in deciding, directly or indirectly, whether to file and/or continue to prosecute the Capsule and/or Tablet Lawsuits.

4. The term “Capsule Lawsuits” refers to those actions instituted by Abbott and/or Fournier in the United States District Court for the Northern District of Illinois alleging infringement of the Curtet Patent, including but not limited to Abbott Laboratories v. Novopharm Ltd., Civ. No. 00-CV-2141 (N.D. Ill.); Abbott Laboratories v. Novopharm Ltd., Civ. No. 00-CV-5094 (N.D. Ill.); Abbott Laboratories v. Novopharm Ltd., Civ. No. 01-CV-1914 (N.D. Ill.); Abbott Laboratories v. Impax Laboratories, Inc., Civ. No. 00-CV-5092 (N.D. Ill.); Abbott Laboratories v. Impax Laboratories, Inc., Civ. No. 00-CV-7865 (N.D. Ill.); and Abbott Laboratories v. Impax Laboratories, Inc., Civ. No. 01-CV-1648 (N.D. Ill.).

5. The term “Tablet Lawsuits” refers to those actions instituted by Abbott and/or Fournier in the United States District Court for the District of Delaware alleging infringement of the Curtet Patent and/or Stamm Patents, including, but not limited to Abbott Laboratories v. Teva Pharmaceuticals USA, Inc., Civ No. 02-1512 (Del.); Abbott Laboratories v. Teva Pharmaceuticals USA, Inc., Civ No. 03-0847 (Del.); Abbott Laboratories v. Teva Pharmaceuticals USA, Inc., Civ No., 04-0047 (Del.) Abbott Laboratories v. Impax Laboratories, Inc. 03-0120 (Del.); Abbott Laboratories v. Impax Laboratories, Inc., Civ No. 03-0288 (Del.); Abbott Laboratories v. Impax Laboratories, Inc. 03-0890 (Del.); Abbott Laboratories v. Impax Laboratories, Inc., Civ No. 04-0048 (Del.).

6. The term “Bases” means all evidence discovered and/or developed by Abbott and/or Fournier and/or the Decision Makers before or during the Capsule Lawsuits and Tablet Lawsuits including, but not limited to, documentary evidence, deposition testimony, and expert opinions and reports.

7. The term “Curtet Patent” means United States Patent No. 4,895,726.

8. The term “Stamm Patents” means United States Patent Nos. 6,074,670; 6,277,405; 6,589,552; 6,596,317; and 6,652,881.

9. The term “Capsule ANDAs” means abbreviated new drug application nos. 75-753 and 75-868.

10. The term “Tablet ANDAs” means abbreviated new drug application nos. 76-433 and 76-509.

11. The term “Identity” means the person’s (a) full given name, together with any and all known nicknames; (b) present employer and business address, or if unavailable, last known employer and business address; (c) present home address, if a natural person, or if unavailable, last known home address; (d) business affiliation, if a natural person, or if unavailable, last

known business affiliation; and (e) job title and description of the duties and responsibilities of such person, if a natural person, including all changes thereto.

11. The terms “and/or”, “or” and “and” are used inclusively, not exclusively.

### **TOPICS**

1. The Identity of the Decision Makers and their respective roles in deciding whether to file and/or continue to prosecute each of the Capsule and/or Tablet Lawsuits.

2. The pre-filing investigation, if any, conducted by or on behalf of Fournier with respect to each of the Capsule and Tablets Lawsuits.

3. The facts known (and when they became known) to Fournier and the Decision Makers supporting Fournier’s infringement positions in the Capsule Lawsuits including, but not limited to, facts regarding (1) the Capsule ANDAs and/or products manufactured under those ANDAs and (2) the Curtet Patent (and its prosecution history).

4. The facts known (and when they became known) to Fournier and the Decision Makers supporting Fournier’s infringement, validity and enforceability positions in the Tablet Lawsuits including, but not limited to, facts regarding (1) the Tablet ANDAs and/or products manufactured under those ANDAs and (2) the Curtet and Stamm Patents (and their prosecution histories).

5. Fournier’s and the Decision Makers’ Bases and motivations for filing and perpetuating the Capsule Lawsuits and Tablet Lawsuits.

6. Fournier’s and the Decision Maker’s Bases for believing that the Capsule ANDAs and/or Tablet ANDAs and/or products manufactured under those ANDAs satisfied the limitations of the Curtet Patent claims, including but not limited to the limitations “co-micronized mixture of particles of fenofibrate and a solid surfactant” and “co-micronization of

the fenofibrate and a solid surfactant.”

7. Fournier’s and the Decision Maker’s Bases for believing that the claim limitations requiring a minimum weight percentage content of a hydrophilic polymer (*e.g.*, at least twenty weight percent) in one or more of the Stamm Patents were satisfied by the Tablet ANDAs and/or products manufactured under those ANDAs.

8. Fournier’s and the Decision Maker’s Bases for Abbott’s proposed claim constructions in the Capsule Lawsuits and Tablet Lawsuits.



### CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2006 I electronically filed the foregoing DIRECT PURCHASER PLAINTIFFS' FURTHER NOTICE OF DEPOSITION OF DEFENDANTS FOURNIER INDUSTRIE ET SANTE AND LABORATORIES FOURNIER S.A. using CM/ECF, which will send notification of such filing to all registered participants, including:

Josy W. Ingersoll, Esquire  
John W. Shaw, Esquire  
Karen Keller, Esquire  
Young Conaway Stargatt & Taylor  
The Brandywine Building  
1000 West Street, 17th Floor  
P. O. Box 391  
Wilmington, DE 19899-0391

Mary B. Graham, Esquire  
Morris Nichols Arsht & Tunnell  
1201 North Market Street  
P. O. Box 1347  
Wilmington, DE 19899

Frederick L. Cottrell, III, Esquire  
Anne Shea Gaza, Esquire  
Richards Layton & Finger  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801

Mary B. Matterer, Esquire  
Morris James Hitchens & Williams  
222 Delaware Avenue  
10th Floor  
P. O. Box 2306  
Wilmington, DE 19899

Pamela S. Tikellis, Esquire  
Robert J. Kriner, Jr., Esquire  
A. Zachary Naylor, Esquire  
Chimicles & Tikellis LLP  
One Rodney Square  
P. O. Box 1035  
Wilmington, DE 19899

Jonathan L. Parshall, Esquire  
Murphy Spadaro & Landon  
1011 Centre Road  
Suite 210  
Wilmington, DE 19801

Elizabeth M. McGeever, Esquire  
Prickett Jones Elliott, P.A.  
1310 King Street  
P. O. Box 1328  
Wilmington, DE 19899

Michael I. Silverman, Esquire  
Lynn A. Iannone, Esquire  
Silverman & McDonald  
1010 N. Bancroft Parkway #22  
Wilmington, DE 19805

Patrick Francis Morris, Esquire  
Morris & Morris  
1105 North Market Street  
Suite 803  
Wilmington, DE 19801

I hereby certify that on July 26, 2006 I sent by electronic mail the foregoing document  
to the following non-registered participants:

REPRESENTING DIRECT PURCHASER CLASS  
(C.A. No. 05-340):

Bruce E. Gerstein  
**bgerstein@garwingerstein.com**

Barry S. Taus  
**btaus@garwingerstein.com**

Adam M. Steinfeld  
**asteinfeld@garwingerstein.com**

Rimma Neman  
**rneman@garwingerstein.com**

Daniel Berger  
**danberger@bm.net**

Eric L. Cramer  
**ecramer@bm.net**

Peter Kohn  
**pkohn@bm.net**

Neill W. Clark  
**nclark@bm.net**

Linda P. Nussbaum  
**lnussbaum@cmht.com**

Steig D. Olson  
**solson@cmht.com**

David P. Germaine  
**dgermaine@daarvanek.com**



Joseph Vanek  
**jvanek@daarvanek.com**

Stuart Des Roches  
**stuart@odrlaw.com**

Andrew Kelly  
**akelly@odrlaw.com**

Adelaida Ferchmin  
**aferchmin@odrlaw.com**

David P. Smith  
**dpsmith@psflp.com**

Russell A. Chorush  
**rchorush@hpcllp.com**

Michael F. Heim  
**mheim@hpcllp.com**

REPRESENTING WALGREEN, ECKERD,  
KROGER, MAXI, CVS, RITE AID  
(C.A. No. 05-340):

Elizabeth M. McGeever  
**emmcgeever@prickett.com**

Scott E. Perwin  
**sperwin@kennynachwalter.com**

Lauren Ravkind  
**lravkind@kennynachwalter.com**

Joseph T. Lukens  
**jlukens@hangley.com**

REPRESENTING PACIFICARE  
(C.A. No. 05-340):

Jonathan L. Parshall  
**jonp@msslaw.com**

William Christopher Carmody  
**bcarmody@susmangodfrey.com**

John Turner  
**jturner@susmangodfrey.com**

Shawn Rabin  
**srabin@susmangodfrey.com**

Justin Nelson  
**jnelson@susmangodfrey.com**

Ken Zylstra  
**kzylstra@sbclasslaw.com**

Lyle Stamps  
**lstamps@sbclasslaw.com**

Steve Connolly  
**sconnolly@sbclasslaw.com**

Casey Murphy  
**cmurphy@sbclasslaw.com**

Mark Sandman  
**mms@rawlingsandassociates.com**

Jeffrey Swann  
**js5@rawlingsandassociates.com**

REPRESENTING IMPAX  
LABORATORIES (C.A. No. 03-120)

Mary Matterer  
**mmatterer@morrisjames.com**

John C. Vetter  
**jvetter@kenyon.com**

Asim Bhansali  
**abhansali@kvn.com**

REPRESENTING INDIRECT PARTY  
PLAINTIFFS (C.A. No. 05-360):

Pamela S. Tikellis  
Thomas M. Sobol  
Patrick E. Cafferty  
Jeffery L. Kodroff

Bernard J. Persky  
Michael Gottsch  
A. Zachary Naylor  
Robert Davis  
Brian Clobes  
Michael Tarringer  
Tim Fraser  
David Nalven  
Greg Matthews  
Christopher McDonald  
Kellie Safar  
Ted Lieberman  
Pat Howard  
**tricor@chimicles.com**

Michael I. Silverman  
mike@silverman-mcdonald.psemail.com

Lynn A. Iannone  
lynn@silverman-mcdonald.psemail.com

Patrick Francis Morris  
**pmorris@morrisandmorrislaw.com**

REPRESENTING TEVA  
PHARMACEUTICALS (C.A. No. 02-1512):

Josy W. Ingersoll  
Bruce M. Gagala  
Karen E. Keller  
Christopher T. Holding  
Ken Cohen  
Elaine Blais  
**tricor@ycst.com**

REPRESENTING ABBOTT (ALL CASES):

Mary B. Graham  
**tricor@mnat.com**

William F. Cavanaugh  
**wfcavanaugh@pbwt.com**

Chad J. Peterman  
**cjpeterman@pbwt.com**

REPRESENTING FOURNIER (ALL CASES):

Frederick L. Cottrell, III  
Anne Shea Gaza  
Steven S. Sunshine  
Matthew P. Hendrickson  
Bradley J. Demuth  
Maggie DiMoscato  
Timothy C. Bickham  
**tricolor@rlf.com**

/s/ Jeffrey S. Goddess

Jeffrey S. Goddess (Del. Bar No. 630)  
Jessica Zeldin (Del. Bar No. 3558)  
Rosenthal, Monhait & Goddess, P.A.  
Suite 1401, 919 Market Street  
P. O. Box 1070  
Wilmington, DE 19899-1070  
(302) 656-4433  
jgoddess@rmgglaw.com  
jzeldin@rmgglaw.com